REMARKS

The Office Action of 21 December 2001 has been carefully reviewed. Claims 1-20 are currently pending. Claims 1-3 and 11-14 were rejected under 35 U.S.C. § 102(e) as being anticipated by Egendorf. Claims 4, 5, 15, and 16 were rejected under 35 U.S.C. § 103 as being unpatentable over Egendorf in view of Hilt. Claims 6-10 and 17-20 were rejected under 35 U.S.C. § 103 as being unpatentable over Egendorf in view of Melen.

Applicant respectfully disagrees with the rejections. Applicant herein provides an invention directed to billing subscribers for different qualities of computer network service. In the primary embodiment, the computer network service is internet access, although other networks may be used. If the provider promises a level of service having a certain characteristic, yet fails to deliver it based on statistical data derived from network observations, the subscriber is billed a different rate. One of the primary ways the quality of service is checked is through evaluating packet loss. This is described at length on pages 64-67 of the specification.

Egendorf, the primary reference, is directed to an internet billing method, but the similarity ends there. The billing method of Egendorf is a tri-party arrangement in which a customer buys something from a vendor, and a third party, such as a phone company, bills the customer. The customer pays the third party, and the third party pays the vendor after taking a commission. In this reference, credit card numbers of the customer and the like are protected, and only the institutions of the vendor and the third party carry the risk of their financial information being compromised. This reference is primarily designed to facilitate microtransactions and the like, but has nothing to do with monitoring the level of service provided to the subscriber of an internet service and modifying the rates charged to the subscriber if the quality of service fails to meet the promised goals. As such, the reference classifies as not only non-analogous art, but also completely devoid of teachings that have relevance to the present claims.

Hilt et al. is very similar to Egendorf in that it is a bill paying reference, and is designed to shield the bill payer's account information from vendors and interception. There is nothing that teaches changing the amount charged to an internet service subscriber based on observing the quality of service provided to the subscriber. Hilt et al. does have a packet assembler as described at Col. 16, lines 57-Col. 17, line 13, but this is not a vehicle through which packet loss can be determined. Other than mentioning that the information is sent from one bank to another

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via the packet assembler, there is no teaching or suggestion that packet loss is measured in any way, shape or form. Again, this reference is completely irrelevant to the claimed invention, comprising non-analogous art. Even if it is analogous art, the content of the reference does not teach or suggest the claimed invention.

The final reference, Melen et al., likewise fails to teach or suggest changing billing rates to consumers of a computer network service based on empirically provided quality of service characteristics. Melen et al. is a billing system for the internet, but again, the similarity ends there. This reference is directed to billing a telephone account for orders placed for merchandise over the internet. While routers and switches are described in the reference, there is no data collection therefrom corresponding to the NARs of the present invention such that empirical determinations may be made as to the level of service being provided.

Applicant has amended the independent claims to highlight the fact that it is the computer network quality that is being purchased, evaluated, and whose billing rate may change based on the detected quality of service. Applicant has further amended some of the dependent claims to conform claim language between the dependents and independents.

For an anticipation rejection to be proper, the reference must contain every claim element arranged as claimed. MPEP § 2131. Because Egendorf does not teach all the claim elements, namely evaluating quality of service on a computer network, claims 1-3 and 11-14 are not anticipated and stand in condition for allowance.

To make out a *prima facie* case of obviousness, the Patent Office must present a selection of analogous references that are properly combinable and teach or fairly suggest all of the claim elements. MPEP § 2143.03. A reference is analogous if it is in the same field of endeavor, or if not, then reasonably pertinent to the particular problem solved by the inventor. It must have logically commended itself to the inventor's attention. MPEP § 2141.01(a). References are properly combinable if there is some suggestion or motivation to do so within the reference or well known in the field. Hindsight may not be used to reconstruct the invention using Applicant's disclosure as a template. MPEP § 2143.01.

In the present case, the references are not analogous. They are not in the same field of endeavor - ensuring proper quality of service for network subscribers - nor are they pertinent to solving the problem confronting Applicant.

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Even if the references are analogous by virtue of an overly broad definition of the field of endeavor, a point which Applicant does not concede, the references are not properly combinable. The proffered motivation - "aggregating data for subsequent use" - is terse and unhelpful. Such generalized and vague suggestions are usually a sign of impermissible hindsight. Absent a more definite motivation to combine, the references are not properly combinable.

Assuming, *arguendo*, that the references are properly combinable, they still fail to teach or fairly suggest, either singly, or in combination, the claimed invention, and a *prima facie* case of obviousness has not been made. Specifically, the references fail to teach either singly, or in combination, that a different billing rate may be charged to the subscriber if a quality of service level is not met as claimed.

Claims 4, 5, 15, and 16 were rejected under 35 U.S.C. § 103 as being obvious over Egendorf and further in view of Hilt et al. As described above, these references fail to teach or suggest all of the claimed elements, are non-analogous, and are not properly combinable. Thus, the claims are allowable.

Claims 6-10 and 17-20 were rejected under 35 U.S.C. § 103 as being obvious over Egendorf and further in view of Melen et al. As described above, these references fail to teach or suggest all of the claimed elements, are non-analogous, and are not properly combinable. Thus, the claims are allowable.

Each rejection has been addressed and Applicant earnestly solicits claim allowance at the Examiner's earliest convenience.

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

1. (once amended) A computer implemented method comprising

 providing a <u>computer network</u> subscriber with a networking transmission service having a first characteristic,

 observing at the network that the provided networking transmission service to the <u>computer network</u> subscriber has a second characteristic; and

 billing the <u>computer network</u> subscriber for the networking transmission service having the second characteristic rather than for the service having the first characteristic.

11. (once amended) A computer implemented method comprising

 providing a <u>computer network</u> subscriber with a networking policy having a first level of service,

 collecting data from the <u>computer</u> network using an accounting process that collects different kinds of metrics from the <u>computer</u> network, correlates the metrics to specified <u>computer</u> network flows, and relates the collected and correlated metrics back to the policy that was defined with the first level of service; and

 billing the <u>computer network</u> subscriber for the networking policy having a second level of service rather than for the policy having the first level of service.

12. (once amended) The method of claim 11 further comprising:

 providing an indication whether or not the policy with the first [characteristic] <u>level of service</u> is being satisfied.

13. (once amended) The method of claim 11 further comprising:

 determining at the network that resources are not available for providing the transmission service at the first level <u>of service;</u> and, in response to said determination,

 providing a second level of networking transmission service.

19. (once amended) The method of claim [19] <u>11</u> wherein the accounting process [that] produces information at a granularity level at which the policies are actually deployed.

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20. (once amended) The method of claim [9] 19 wherein the policies are deployed at source and destination IP address, protocol and/or destination port level.

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